

December 6, 2017

Mr. John Canoles  
Eco-Science Professionals, Inc.  
P.O. Box 5006  
Glen Arm, MD 21057

Re: Castanea  
Forest Conservation Variance  
Tracking # 02-17-2521

Dear Mr. Canoles:

A request for a variance from the Baltimore County Code Article 33, Title 6 Forest Conservation was received by this Department of Environmental Protection and Sustainability (EPS) on November 8, 2017. This request would allow removal of 24 of 261 specimen trees to develop a 40-lot subdivision. Of the specimen trees to be removed, one is nonnative and two are in poor condition. All of the specimen trees to be removed are outside of forest and Forest Buffer Easement on the former country club and golf course.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of this property. The petitioner is seeking to develop 40 residential estate homesites, including roads and utilities. Requiring retention of all specimen trees would preclude the development as proposed due to the number and distribution of the trees. However, the site could be developed to some degree without impacting specimen trees. Therefore, denying the variance would not deprive the petitioner of all beneficial use of the property. Consequently, we find that this criterion has been not been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The petitioner's plight in removing the specimen trees is due to unique circumstances associated with their abundance and location relative to the buildable area rather than general conditions in the neighborhood. Therefore, we find the second criterion has been met.

The third criterion (Subsection 33-6-116(d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. Granting the variance would result in a development of large lots with large houses, which is consistent with the character of the neighborhood. Therefore, we find that granting the variance will not alter the essential character of the neighborhood; thus, this criterion has been met.

The fourth criterion (Subsection 33-6-116(e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. None of the specimen trees are within the recorded Forest Buffer Easement onsite, and no forest clearing is proposed to develop the subdivision. Moreover, tree planting is proposed in open portions of the Forest Buffer Easement as mitigation for the removal of the specimen trees. Therefore, we find that granting the variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116(e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has taken no actions necessitating this variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Allowing removal of 24 of 261 specimen trees would be consistent with the spirit and intent of the Forest Conservation Law given that no forest would be impacted, and the development plan was redesigned to avoid numerous other specimen trees as well as forest that is high priority for retention. Additionally, tree planting will be provided onsite as mitigation for the loss of these trees. Therefore, we find that this criterion has been met.

Based on our review, this Department finds that all required criteria have been met. Therefore, the requested variance is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. 53,440 square feet of open Forest Buffer Easement shall be planted with native deciduous trees a minimum of 1-inch caliper to mitigate for the 24 specimen trees to be removed. This required mitigation area is based on 25% of the total critical root zone of the 24 trees.

2. A note must be on the plan accompanying any permit application stating:

“A special variance to the Forest Conservation Law was granted by Baltimore County Dept. of Environmental Protection & Sustainability on December 6, 2017 to allow the removal of 24 specimen trees. Conditions were placed on this approval to mitigate the loss of these trees and ensure protection of the remaining forest resources onsite, including onsite tree planting.”

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3. The protective signage and permanent monuments along the entire outer Forest Buffer and/or Conservation Easement shall be installed in accordance with the approved Forest Conservation Plan prior to EPS approval of any further permits at Castanea.
4. All measures specified on the approved FCP to protect the specimen trees to remain shall be installed prior to EPS approval of any permit for the associated site work.
5. A forest conservation security based on 110% of an EPS-approved, itemized cost estimate shall be posted via an Environmental Agreement prior to EPS approval of any further permits for Castanea.
6. The final forest conservation plan (FCP) shall be revised to reflect the terms of this variance and address EPS comments in separate correspondence.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the party responsible for meeting the conditions of this variance sign the statement on the following page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If there are any questions regarding this correspondence, please contact Mr. Glenn Shaffer at (410) 887-3980.

Sincerely,

David V. Lykens  
Deputy Director

DVL/ges

- c. CJ Allardo, CR Golf Club, Inc.  
Marian Honeczy, Maryland Department of Natural Resources

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I/we agree to the above conditions to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

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Responsible Party's Signature

Date

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Responsible Party's Printed Name